

# FOIA FEES & EXPEDITED PROCESSING

## FOIA FEES

FEES, FEE CATEGORIES, and FEE WAIVERS

## EXPEDITED PROCESSING

Kathy Ray ([kathy.ray@dot.gov](mailto:kathy.ray@dot.gov))  
Departmental FOIA Officer  
U.S. Department of Transportation  
September 11, 2012

# FOIA FEES

FEES, FEE CATEGORIES, FEE WAIVERS

# FEES

There is no initial fee to make a FOIA request, and in many cases no fees are charged. However, agencies are authorized by law to recover the direct costs of providing information to a FOIA requester.

The 1986 FOIA Amendments made major revisions to the FOIA's fee provisions. To implement those provisions, the 1986 statute:

- Directed the Office of Management and Budget (OMB) to promulgate regulations containing a uniform schedule of FOIA fees that would apply to all agencies subject to the FOIA. **OMB's Uniform Fee Guidelines became effective April 27, 1987.**
- Directed agencies to promulgate revised FOIA regulations implementing the FOIA's amended fee and fee waiver provisions conforming with OMB's fee guidelines. **Agencies subject to FOIA now have fee provisions included in their FOIA regulations.**

# FEE CATEGORIES

- Commercial use requesters
- Educational institutions, non-commercial scientific institutions, and representatives of the news media
- All other requesters



# FEE CATEGORY DETERMINATIONS

**Commercial use requesters** seek information for a use that furthers their commercial, trade, or profit interest.

**Educational institutions** must show that the request is authorized by and under the auspices of an eligible institution and the records are not sought for personal or commercial use, but for furtherance of scholarly research.

**Non-commercial scientific institutions** operate solely to conduct scientific research.



# FEE CATEGORY DETERMINATIONS (CONT'D)

## Representative of the News Media

A person or entity that actively gathers news and is organized and operated to publish or broadcast news to the public.

“News” means information that is about current events or that would be of current interest to the public.

Does the requester use editorial skills to create new content based on the material they have gathered?



# FEE CATEGORY DETERMINATIONS (CONT'D)

## All other requesters

Requesters who do not fit into the previous categories are put into the “all other” category.

NOTE: The requester’s fee category is based on their intent in seeking the information; not their identity.

A requester’s fee category can change over time, and even from one request to another.



# TYPES OF FEES

## Search Fees

- Time spent searching for and determining which records are responsive (even if no responsive records are located).

## Review Fees

- Time spent reviewing the records to determine which portions can be released and making any necessary redactions.

## Duplication Fees

- The cost per page of records being released to the requester.





# FEES – WHO PAYS WHAT?

## Commercial use requesters


Search, review, and duplication

## Educational institutions, non-commercial scientific institutions, and news media


Duplication only (1<sup>st</sup> 100 copies free)

## All other requesters


Search (1<sup>st</sup> 2 hours free) and duplication (1<sup>st</sup> 100 copies free)



# PAYMENT OF FEES

- Requesters need to indicate their willingness to pay fees.
  - Agencies should not incur fees higher than a requester has indicated they are willing to pay.
  - If an agency's fee estimate is higher than the requester has indicated they are willing to pay, then the agency should reach out to the requester.
  - If fees will exceed \$250, agencies may require advance payment.
  - FOIA fees are deposited in the General Fund of the U.S. Treasury (unless your agency has statutory authority directing otherwise).
- 

# WHEN DO WE NOT CHARGE FEES?

- Fees are not charged if the agency's cost to collect and process the fee exceeds the fee.
  - Each agency's FOIA regulations establish the threshold for that agency.
  - When we grant a fee waiver.
- 

# FEES – 2007 AMENDMENTS

The OPEN Government Act of 2007 imposed limitations on charging fees when response times are not met.

If no unusual or exceptional circumstances (as defined in the FOIA statute) exist, and the statutory deadline is not met, then agencies may **not** charge certain fees.

**Commercial use requesters** - No search fees (review and duplication fees still apply)

**Media requesters/educational and scientific institutions** - No duplication fees


**All other requesters** - No search fees (duplication fees still apply)




## FEE WAIVERS

- A fee waiver or reduction is appropriate if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

# EVALUATING REQUESTS FOR A FEE WAIVER

1. Do the records concern **the operations or activities of the government**?
  2. Will the released records **likely contribute to an understanding of** the operations or activities of the government?
  3. Will the release contribute to **public** understanding of the operations or activities of the government?
  4. How **significantly** will the released records contribute to an understanding of the operations or activities of the government?
  5. Does the requester have a **commercial interest** in the records?
  6. If the requester has a commercial interest, **does it outweigh the public interest**?
- 

# FEE WAIVERS – ADDITIONAL POINTS

- Indigence alone is not a basis to grant a fee waiver.
  - Fee waivers are determined on a case-by-case basis.
  - Granting a fee waiver to a requester does not guarantee that the requester will qualify for a fee waiver in the future.
  - Fee waiver denials are appealable.
- 

The background consists of several geometric shapes. A large orange triangle occupies the right half of the image. On the left, there are two blue triangles: a lighter blue one in the upper left and a darker blue one in the lower left. The text 'EXPEDITED PROCESSING' is written in a light blue color, following the diagonal line where the orange triangle meets the blue ones.

EXPEDITED PROCESSING



# EXPEDITED PROCESSING

- Agencies typically process FOIA requests in the order they are received – on a “first in, first out” basis. The exception to this rule is when a requester is granted expedited processing.
- Requests are granted expedited processing and processed out of order only if a compelling need is demonstrated and it is determined that the compelling need involves:
  - circumstances in which the lack of expedited treatment could reasonably be expected to pose an **imminent threat to the life or physical safety** of an individual; or
  - a request made by a person primarily engaged in disseminating information, with a **time urgency to inform the public** of actual or alleged Federal Government activity.

# EXPEDITED PROCESSING – ADDITIONAL POINTS

- A requester who seeks expedited processing must establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally.
- When a request for expedited processing is granted, the request goes to the “front of the line.” As this disadvantages other requesters in the queue, please evaluate requests for expediting processing carefully.
- When a requester seeks expedited processing, the agency must inform the requester within 10 calendar days whether their request is granted or denied.
- A denial of a request for expedited processing is appealable.

# FOR MORE INFORMATION ON FEES AND EXPEDITED PROCESSING...

- Your Agency's FOIA Regulations
  - OMB's Uniform FOIA Fee Schedule and Guidelines (1987)
  - DOJ/OIP's 1987 Fee Waiver Policy Guidance (FOIA Update, Vol. VIII, No. 1)
  - DOJ/OIP's 1983 Guidance on Expedited Processing (FOIA Update Vol. IV, No. 2)
  - DOJ/OIP's Guide to the FOIA
- 